A **TENAGA NASIONAL BHD**

v.

PERWAJA STEEL SDN BHD

B COURT OF APPEAL, PUTRAJAYA
ZAINUN ALI JCA
RAMLY ALI JCA
ZAHARAH IBRAHIM JCA
[CIVIL APPEAL NO: W-(IM)(NCC)2760-2011]
C 5 NOVEMBER 2012

PUBLIC UTILITIES: *Electricity - Supply and consumption - Late payment - Surcharge - Whether supplier entitled to charge penalty for late payment - Claim for surcharge filed more than one year after cause of*
D *action arose - Whether claim time-barred - Electricity Act 1949 - Electricity Supply Act 1990, O. 26A - Limitation Act 1953, s. 6(4)*

CONTRACT: *Construction - Power supply contract - Electricity charges, recovery of - Licensee and consumer executing contract under Electricity*
E *Act 1949 - 1949 Act repealed and replaced by Electricity Supply Act 1990 - No new contract entered by parties - Whether rights of parties restricted to 1949 Act - Recovery of payment under latter Act - Whether licensee entitled to levy penalty for late payment - Whether penalty constituted new liability outside contracted provisions - Electricity Supply Act 1990,*
F *s. 26A - Interpretation Acts 1948 & 1967, ss. 3, 30, 77*

CIVIL PROCEDURE: *Disposal on point of law - Issues - Parties framing one single issue for determination by court - Whether open for trial judge to go a step further and decide on other issues - Rules of the High Court 1980, O. 14A*

G

LIMITATION: *Expiry of period - Power supply contract - Recovery of electricity charges - Penalty for late payment - Whether licensee entitled to levy surcharge for late payment - Claim for surcharge filed more than one year after cause of action arose - Whether claim time-barred - Electricity*
H *Supply Act 1990 s. 26A - Limitation Act 1953, s. 6(4)*

The plaintiff, formerly known as Lembaga Letrik Negara ('LLN') and set up under the Electricity Act 1949 ('the 1949 Act'), is a licensee and supplier of electricity in Malaysia under the Electricity
I Supply Act 1990 ('the 1990 Act'), while the defendant is involved in the business of manufacturing and selling of steel. On 21 July 1990, LLN executed a power supply agreement with the

defendant ('the Agreement'), where it was *inter alia* agreed, *vide* cl. 19 thereof, that the defendant would be bound by the 1949 Act and the Rules and Regulations made thereunder including any amendments thereto. Subsequently, on 1 September 1990, the 1990 Act and the Electricity Supply (Successor Company) Act 1990 came into force, and with that the 1949 Act was repealed and the plaintiff was incorporated to substitute LLN. The repeal and incorporation notwithstanding, no new contract was executed by the parties. Be that as it may, in 2011, the plaintiff averred that the defendant had defaulted in paying its electricity bills, and consequently claimed for recovery of the charges amounting to RM30,971,693.30, as well as penalty for late payment of RM9,734,247.87. As for the penalty charges, it was the plaintiff's stand that pursuant to s. 26A of the 1990 Act, read with reg. 4(5) of the Licensee Supply Regulations 1990, it was entitled to levy such surcharge. The defendant conceded to the principal claim, but challenged the legality of the surcharge so levied. Before the High Court, the parties agreed to ventilate their dispute by summary procedure under O. 14A of the Rules of the High Court 1980 – and ventilate it upon a single question of whether the plaintiff was entitled to levy the surcharge under s. 26A of the 1990 Act notwithstanding that the Agreement was executed prior to the commencement of the Act. The learned judge, upon appraisal of the facts, took the view that cl. 19 of the Agreement precluded the imposition of surcharge by way of penalty, and the penalty so prescribed by s. 26A of the 1990 Act, if applied to the defendant, would constitute a liability outside the contracted provisions – and in the circumstances – answered the question posed in the negative and dismissed the plaintiff's subsidiary claim. It was the learned judge's further view that since s. 6(4) of the Limitation Act 1953 prescribed a one-year time frame for institution of an action to recover any penalty recoverable in law, and since the plaintiff's cause of action arose in 2009, the plaintiff's action was hence time-barred. The plaintiff appealed and before the Court of Appeal questions *inter alia* arose as to: (i) whether the rights and obligations of the parties ought to be restricted to the provisions of the 1949 Act; (ii) whether the repeal of the 1949 Act constituted an "amendment" envisaged by cl. 19 of the Agreement, and if so whether the plaintiff could levy the surcharge in question; and (iii) whether, on account of the parties agreeing to pose only one single question for the learned judge's determination herein, the defendant was estopped from arguing that the plaintiff's claim was time-barred.

A **Held (allowing appeal with costs; allowing claim for surcharge)**

Per Zainun Ali JCA delivering the judgment of the court:

(1) The High Court judge erred in construing cl. 19 of the
B Agreement, when he failed to appreciate the circumstances envisaged by the term "amendment" as stated in c. 19. Clause 19 clearly envisages any repeal of the 1949 Act. The word 'amend' in this context denotes a process made in changing the existing law. Pursuant to s. 3 of the Interpretation Acts
C 1948 and 1967, this process also involves the act of 'repealing", namely the rescinding, revocation, cancellation and replacement of the law resulting in the change in the existing law. Consequently, when an Act is repealed and reenacted, it amounted to an amendment of that Act. (paras 20-21)

D **(2)** Based on the foregoing, and the construction of cl. 19 of the Agreement, the rights and obligations of the parties must not be restricted to the provisions of the 1949 Act but should include any changes in the law that have taken place. It follows that the 1990 Act must be made applicable to
E determine the rights and obligations of the contractual parties. It follows further that by virtue of s. 26A of the 1990 Act, the plaintiff is empowered to levy surcharge for late payment. (para 22)

F **(3)** The High Court Judge erred in deciding the matter on the basis of the Limitation Act 1953. It is trite that once parties inform the court that the case is to be disposed based on the construction of agreement or point of law coupled with the election not to call witnesses, all the facts and issues relevant
G thereto must be presumed to have been settled between the parties. Having elected to defend the claim only on the sole issue framed, the defendant had represented that it had abandoned its pleaded defence on limitation. Therefore the defendant is now estopped by its conduct, from arguing that
H the plaintiff's claim for the surcharge was time-barred. (paras 28-29 & 32)

I

Bahasa Malaysia *Translation Of Headnotes*

Plaintif, yang sebelum ini dikenali sebagai Lembaga Letrik Negara ('LLN') dan ditubuhkan di bawah Akta Elektrik 1949 ('Akta 1949'), adalah pemegang lesen dan pembekal elektrik di Malaysia di bawah Akta Bekalan Elektrik 1990 ('Akta 1990'), sementara defendan terlibat dalam perniagaan pengeluaran dan penjualan besi waja dan keluli. Pada 21 Julai 2990, LLN memeterai satu perjanjian pembekalan tenaga dengan defendan ('Perjanjian'), di mana, melalui fasal 19 Perjanjian, ianya antara lain dipersetujui bahawa defendan akan terikat dengan Akta 1949 dan Peraturan-peraturan serta Kaedah-kaedah di bawah Akta tersebut, termasuk pindaan-pindaan yang dibuat terhadapnya. Berikutnya, pada 1 September 1990, Akta 1990 dan Akta Bekalan Elektrik (Syarikat Pengganti) 1990 mula berkuatkuasa, dan ekoran dari itu Akta 1949 telah dimansuhkan dan plaintif pula telah diperbadan bagi menggantikan LLN. Pemansuhan dan pemerbadanan ini bagaimanapun tidak membawa pihak-pihak memeterai suatu perjanjian baru. Apapun, pada tahun 2011, plaintif mendakwa bahawa defendan telah gagal membayar bil-bil elektriknya, dan sekaligus membuat tuntutan bagi mendapatkan bayaran-bayaran tersebut berjumlah RM30,971,693.30 berserta dengan denda kelewatan sebanyak RM9,734,247.87. Adalah menjadi hujah plaintif, berhubung dengan denda kelewatan, bahawa mereka berhak mengenakan denda tersebut berdasarkan peruntukan s. 26A Akta 1990 dibaca bersama per. 4(5) Peraturan-Peraturan Bekalan Pemegang Lesen 1990. Defendan akur kepada tuntutan utama, tetapi mencabar kesahan tuntutan berhubung denda yang dikenakan atas mereka. Di hadapan Mahkamah Tinggi, pihak-pihak bersetuju untuk menyelesaikan pertikaian mereka melalui prosedur terus A. 14A Kaedah-kaedah Mahkamah Tinggi – dan menyelesaikannya hanya atas persoalan tunggal sama ada plaintif boleh mengenakan denda di bawah s. 26A Akta 1990 walaupun Perjanjian mereka dimeterai sebelum Akta tersebut berkuatkuasa. Yang arif hakim, setelah menilai fakta-fakta, mengambil pendirian bahawa fasal 19 Perjanjian menghalang pengenaan bayaran kelewatan melalui denda, dan denda seperti yang ditetapkan oleh s. 26A, jika dikenakan ke atas defendan, merupakan satu bentuk liabiliti yang tidak dirangkumi oleh kontrak – dan oleh hal yang demikian – telah menjawab soalan secara negatif sekaligus menolak tuntutan sampingan plaintif. Selain itu, yang arif hakim juga berpandangan bahawa oleh kerana s. 6(4) Akta Had Masa 1953

menetapkan tempoh setahun bagi membuat tuntutan untuk mendapatkan denda yang dibenarkan oleh undang-undang, dan oleh kerana kausa tindakan plaintif berbangkit pada tahun 2009, maka tuntutan plaintif jelas terhalang oleh had masa. Perayu merayu dan di hadapan Mahkamah Rayuan persoalan antara lain berbangkit: (i) sama ada hak-hak dan obligasi pihak-pihak harus hanya tertakluk kepada Akta 1949; (ii) sama ada pemansuhan Akta 1949 merupakan suatu "pindaan" seperti yang dinyatakan di dalam fasal 19 Perjanjian, dan jika begitu sama ada plaintif boleh mengenakan denda yang berkenaan; dan (iii) sama ada, disebabkan pihak-pihak telah bersetuju untuk hanya mengemukakan satu persoalan sahaja untuk pemutusan yang arif hakim, maka defendan tidak lagi boleh berhujah bahawa tuntutan plaintif telah dihalang oleh had masa.

Diputuskan (membenarkan rayuan dengan kos; membenarkan tuntutan tambahan)

Oleh Zainun Ali HMR menyampaikan penghakiman mahkamah:

(1) Hakim Mahkamah Tinggi khilaf dalam mentafsir fasal 19 apabila gagal menimbang halkeadaan-halkeadaan yang dibayangkan oleh perkataan "pindaan" dalam fasal 19 tersebut. Fasal 19 jelas membayangkan pemansuhan Akta 1949. Perkataan "pinda" dalam konteks ini melambangkan proses yang dibuat dalam mengubah undang-undang semasa. Berdasarkan s. 3 Akta Tafsiran 1948 dan 1967, proses ini melibatkan perbuatan 'memansuh', iaitu membatal, memadam dan mengganti undang-undang sekaligus menyebabkan perubahan pada undang-undang. Oleh yang demikian, bilamana sesuatu Akta dimansuh dan digubal semula, ia sama seperti meminda Akta tersebut.

(2) Berdasarkan kepada pandangan di atas, dan pentafsiran fasal 19 Perjanjian, hak-hak dan obligasi pihak-pihak tidak harus dihadkan kepada peruntukan-peruntukan Akta 1949 tetapi harus merangkumi semua perubahan yang berlaku pada undang-undang. Ianya mengikut bahawa Akta 1990 adalah terpakai bagi menentukan hak-hak dan obligasi pihak-pihak yang berkontrak. Ia mengikut selanjutnya bahawa berdasarkan s. 26A Akta 1990 plaintif berkuasa untuk mengenakan denda kerana kelewatan pembayaran.

(3) Hakim Mahkamah Tinggi khilaf apabila memutuskan hal perkara berasaskan Akta Had Masa 1953. Adalah jelas bahawa sebaik sahaja pihak-pihak memberitahu mahkamah bahawa kes akan diputuskan berdasarkan pentafsiran perjanjian atau atas isu undang-undang dan ditambah dengan pilihan untuk tidak memanggil saksi-saksi, kesemua fakta dan isu yang berkaitan dengannya harus dianggap sebagai telah diselesaikan oleh pihak-pihak. Setelah memilih untuk menjawab tuntutan hanya atas isu tunggal seperti yang dirangka, defendan memberi representasi bahawa ia telah meninggalkan pembelaan had masa yang diplid olehnya. Oleh itu, melalui kelakuannya defendan kini diestop dari berhujah bahawa tuntutan plaintif adalah terhalang oleh had masa.

Case(s) referred to:
Lim Phin Khian v. Kho Su Ming [1996] 1 CLJ 529 SC ***(refd)***
Maxwell v. Murphy [1957] 96 CLR 261 ***(refd)***
Thien Kon Thai v. Lassim Abdul Rahman & Ors [2009] 1 LNS 414 HC ***(refd)***

Legislation referred to:
Electricity Supply Act 1990, s. 26A
Electricity Supply (Successor Company) Act 1990, s. 3(1), (2)(b)
Interpretation Acts 1948 & 1967, ss. 3, 30(1)(b), 77(a)
Licensee Supply Regulations 1990, reg. 4(5)
Limitation Act 1953, ss. 6(4), 256A
Rules of the High Court 1980, O. 14A

For the appellant - Steven Thiru (David Mathew with him); M/s Shook Lin & Bok
For the respondent - Gabriel Daniel (Siow Pei Tee with him); M/s Paul Ong & Assocs

[Appeal from High Court, Kuala Lumpur; Civil Suit No: D-22NCC-891-2011]

Reported by Wan Sharif Ahmad

JUDGMENT

Zainun Ali JCA:

Introduction

[1] In this appeal, the appellant was the plaintiff. The parties will be referred to as they appear in the court below.

[2] In the High Court, the plaintiff's claim was for RM9,734,247.87 being penalty or surcharge for late payment of electricity charges. Upon agreement of the parties, the judge ordered the case to be determined based on submissions of parties and dispensed with the requirement of calling witnesses.

[3] The sole question before the court was whether the plaintiff has the right to impose a surcharge for late payment under s. 26A of the Electricity Supply Act 1990 ("the Act"), notwithstanding that the contract between the parties was executed prior to the commencement of the Act.

[4] The learned judge answered the question in the negative and dismissed the plaintiff's claim.

[5] Thus the plaintiff's (appellant) appeal before us.

Facts

[6] The plaintiff is a licensee and supplier of electricity in Malaysia under the Electricity Supply Act 1990 (the "1990 Act"). The plaintiff was previously a statutory body known as the National Electricity Board or Lembaga Letrik Negara ("LLN") set up under the Electricity Act 1949 (the "1949 Act").

[7] The defendant is a public listed company involved in the business of manufacturing and selling of steel.

[8] Pursuant to a power supply agreement dated 21 July 1990, LLN agreed to supply electricity to the defendant's premises. Under cl. 19 of the agreement, the defendant agreed to be bound by the 1949 Act and the rules and regulations made thereunder including any amendment thereto. Clause 19 reads as follows:

> Terikat kepada Akta Elektrik 1949 dan Kaedah-Kaedah dan Peraturan-peraturan yang dibuat di bawah ini dan apa-apa pindaan kemudian ke atasnya.

[9] Subsequently, the 1990 Act came into force on 1 September 1990 replacing the 1949 Act. The plaintiff was incorporated to substitute LLN. Pursuant to ss. 3(1) and 3(2)(b) of the Electricity Supply (Successor Company) Act 1990, all rights and liabilities of LLN were transferred to the plaintiff.

[10] As a matter of fact, a new contract was not signed by the parties for the supply of electricity to the defendant's premises subsequent to 1 September 1990.

[11] The plaintiff's action against the defendant was for recovery of the electricity charges. Since 4 March 2011 the defendant had failed to make payment towards the monthly electricity charges issued by the plaintiff. As at 24 May 2011, there was an outstanding sum of RM30,971,693.30 due and payable by the defendant.

[12] The plaintiff also claimed a sum of RM9,734,247.87 being penalty for late payment. The claim for penalty or surcharge on late payments was made pursuant to s. 26A of the 1990 Act read together with reg. 4(5) Licensee Supply Regulation 1990, which entitled the plaintiff to impose a surcharge of 1% per month calculated on a daily basis on all outstanding sums due on bills issued upon the expiry of 30 days.

[13] The principal sum was not disputed. The defendant made full payment of the principal sum subsequent to the filing of the action. At the trial, the parties agreed that the only issue before the court was in respect of the surcharge payment and that the case shall be disposed by way of submissions of parties, without calling any witnesses.

[14] The issue before the court was framed as follows:

> Whether the plaintiff is entitled to impose a surcharge for late payment under section 26A of the Electricity Supply Act 1990, notwithstanding that the Power Supply Agreement between the defendant and LLN was executed on 21 July 1990 prior to the commencement of the Electricity Supply Act 1990.

[15] The High Court Judge answered the issue in the negative. The judge was of the view that cl. 19 of the contract precludes the imposition of a surcharge by way of penalty. This penalty imposed by the 1990 Act, if applied to the defendant would in effect amount to imposing a new liability outside of the contracted provisions. In addition, based on s. 6(4) of the Limitation Act 1953, an action to recover any penalty which is recoverable by any written law must be brought after the expiration of one year from the date on which the cause of action accrued. In the present case, since the cause of action accrued in February 2009, the plaintiff's claim for the surcharge was barred by limitation.

A **Broad Grounds**

[16] It is trite law that parties are bound by the provisions of their contract. Clause 19 expressly states that the parties are bound by the provisions in the 1949 Act and the Rules and
B Regulations made thereunder including any amendment thereto. In other words the rights and obligations of the parties in the contract are not restricted to the 1949 Act. Instead they extend to any amendments made pursuant to the 1949 Act. Therefore, the material question to be asked here is that, when the 1990 Act
C was enacted and the 1949 Act was repealed, whether it amounts to an amendment as envisaged in cl. 19?

[17] The defendant averred that the plaintiff has no right to levy a surcharge on late payment. Clause 19 of the contract makes it explicit that the plaintiff was only bound by the 1949 Act and the
D rules and regulations made thereunder. In the absence of a new contract between the parties which incorporated the provisions of the 1990 Act and the rules and regulations made thereunder, the 1949 Act continues to apply in respect of the rights, privileges and obligations of the parties.
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[18] In this regard, counsel for the defendant submitted that an amendment did not take place because the 1990 Act had repealed the 1949 Act. Section 3 of the Interpretation Acts 1948 and 1967 defines "repeal" to include "rescind, revoke, cancel and
F replace". On this basis, it was further argued that by s. 30(1)(b) of the Interpretation Acts 1948 and 1967, the repeal of a written law shall not "affect any right, privilege obligation or liability acquired, accrued or incurred under the repealed law". The defendant submitted that the above position is further fortified by
G the provision of s. 77(a) of the Interpretation Acts. The said section provides that the repeal of a written law shall not "revive anything not in force or existing at the time at which the repeal takes effect".

H **[19]** Counsel for the plaintiff submitted that the word "amend" is also defined in s. 3 of the Interpretation Acts to include "repeal, add to and vary". Clause 19 of the contract when read with the definition of the word "amend" in s. 3 of the Interpretation Acts, clearly points to the 1990 Act as being the applicable law.

I

[20] We agree with learned counsel for the plaintiff that cl. 19 clearly envisages any repeal of the 1949 Act which in this case would include the 1990 Act. The High Court Judge had erred in construing cl. 19 of the contract, when she failed to appreciate the circumstances envisaged by the term "amendment" as stated in cl. 19. Instead, the fact that the 1990 Act had repealed the 1949 Act had led the learned judge to treat the effect of a statute when it repeals another statute as the focal point of the case. The learned judge then reiterated the position in the common law that a statute changing the law must not be imposed to define the rights or liabilities of parties in a contract unless the intention appears with reasonable certainty, as enunciated in the decision of the Federal Court in *Lim Phin Khian v. Kho Su Ming* [1996] 1 CLJ 529 which cited the case of *Maxwell v. Murphy* [1957] 96 CLR 261 with approval. The learned judge then concluded that the effect of the 1990 Act would not affect the vested or entrenched right of the defendant not to have a surcharge levied on it because there was a clear contractual provision encapsulating the 1949 Act expressly.

[21] It is our view that the word "amend" in this context denotes a process made in changing the existing law. Pursuant to s. 3 of the Interpretation Act this process also involves the act of "repealing" namely the rescinding revocation, cancellation and replacement of the law resulting in the change in the existing law. A provision in a statute can also be repealed and reenacted. A written law can also be repealed by another written law.

[22] In view of the foregoing and based on the construction of cl. 19, the rights and obligations of the parties must not be restricted to the provisions in the 1949 Act but should include any changes in the law that have taken place. When the 1990 Act was enacted, repealing the 1949 Act, it amounts to an amendment as envisaged in cl. 19. Putting it in another way, the parties had agreed that they would be bound by any statutory provision that amended or repealed the 1949 Act. Therefore, the 1990 Act must be made applicable to determine the rights and obligations of the contractual parties. It follows that by virtue of s. 26A of the 1990 Act, the plaintiff is empowered to levy a surcharge for late payment.

Having answered the question posed in the affirmative, the plaintiff's claim for a surcharge must be allowed.

[23] There is only one single issue framed by the parties to be determined by the court. The learned High Court judge had erred when she went a step further in deliberating and deciding on the issue of limitation when the parties had agreed that the disposal of the case would be on a point of law.

[24] Based on the notes of proceedings, the matter was fixed for various mention dates for the parties to come to a settlement. On 22 September 2011, the court was informed that the parties had reached settlement for the principal sum and that the only issue left for determination was on the plaintiff's right to impose the surcharge. Thus, the court fixed a trial date and gave pre-trial directions. On the trial date, the court was informed that the parties had agreed for the case to be tried on a single issue without the necessity of calling any witnesses. The court then proceeded to hear submissions from both counsel.

[25] In view of the above, it is clear that upon the agreement of parties the court had invoked O. 14A of the Rules of the High Court 1980 (RHC) for a disposal of the case on a point of law. This is self evident, even if the notes of proceedings made no such record.

[26] Order 14A of the RHC reads as follows:

> (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that:
>
> (a) such question is suitable for determination without the full trial of the action; and
>
> (b) such determination will finally determine the entire cause or matter or any claim or issue therein.
>
> (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.
>
> (3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.
>
> (4) ...
>
> (5) ...

[27] It is trite that once parties inform the court that the case is to be disposed based on the construction of agreement or point of law coupled with the election not to call witnesses, all the facts and issues relevant thereto must be presumed to have been settled between the parties. It follows that the outcome of the plaintiff's claim rests entirely on the answer to the questions posed to the court.

[28] In the present case, the defendant had agreed for the case to be disposed on a single issue, namely on the application of the 1990 Act to the contract which was executed prior to the commencement of the 1990 Act. The issue of limitation which was not posed to the court involved both questions of fact and law. Since the requirement of calling witnesses had been dispensed with, the plaintiff would be prejudiced since it was deprived of the opportunity to present the evidence on matters relating to the surcharges, particularly on the periodic breakdown of the surcharges.

[29] Having elected to defend the claim only on the sole issue framed, the defendant had represented that it had abandoned its pleaded defence on limitation. Therefore the defendant is now estopped by its conduct, from arguing that the plaintiff's claim for the surcharge was time barred. Estoppel applies to prevent the defendant from pursuing the defence of limitation when it was available to be raised and framed as the second issue.

[30] Estoppel is a doctrine of wide utility which pervades substantive and adjectival law. In this respect, we need go no further than to quote the judgment of the Court of Appeal in *Thien Kon Thai v. Lassim Abdul Rahman & Ors* [2009] 1 LNS 414 at para. 9 where the court stated:

> It has been said often enough that estoppel is a doctrine of wide utility which pervades substantive and adjectival law. Its application depends on the justice of a particular case. If it would be unjust for a party to assert a right or conduct his or her case in a certain way or to deny the existence of certain state of affairs, the court will not allow him or her.

[31] In *Thien Kon Thai v. Lassim Abdul Rahman & Ors* [2009] 1 LNS 414, the plaintiff brought an action in the High Court to recover certain lands from the defendant. It was the defendant's defence that the lands had been transferred and registered in the

A name of one Madam Thien. The defendant then called Madam Thien as a witness. In her cross-examination, she denied that she was a party to a fraud perpetrated by the defendant. At the end of the trial, the learned judge found that the defendant was guilty of fraud and allowed the plaintiff's claim. Consequently, the
B transfer of the lands to Madam Thien was set aside. The defendant filed an appeal. Madam Thien applied for leave to intervene in the appeal. The Court of Appeal rejected the argument put forward by Madam Thien's counsel that she had been adversely affected by the High Court decision and that the
C lands had been taken away without the opportunity of being heard. It was held that Madam Thien was the *alter ego* of the defendant. In any event, she must be estopped by her conduct in the court below from pursuing her application for leave to intervene. Being a witness, she had notice of the plaintiff's case
D on the fraudulent conduct of the defendant. Nevertheless, she did nothing to make herself a party to the action.

[32] Thus in our view when an Act is repealed and reenacted as happened in the instant appeal as regards the 1949 Act, it
E amounts to an amendment of that Act. Thus in this connection there is no specific right conferred on the respondent against the imposition of the surcharge. As regards the issue of limitation, we agree with the appellant that the parties appeared to have agreed that the issue of s. 256A is the sole issue to be determined and
F therefore the issue of limitation have been abandoned. In the circumstances, the High Court judge erred in deciding the matter on the basis of the Limitation Act 1953.

[33] We therefore allow the appeal with costs and set aside the
G order of the High Court.

[34] Costs of RM10,000 to the appellant.

[35] The deposit is refunded to the appellant.

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